



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB043]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Old Sitka Dock North Dolphins Expansion Project in Sitka, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Halibut Point Marine Services, LLC (HPMS) to incidentally harass, by Level A and Level B harassment only, marine mammals during construction activities associated with the Old Sitka Dock North Dolphins Expansion Project in Sitka, Alaska.

DATES: This Authorization is valid from April 15, 2021 through April 14, 2022.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, request for a new IHA, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

History of Request

On July 30, 2019, NMFS received a request from HPMS for an IHA to take marine mammals incidental to dock expansion activities. On April 8, 2020, NMFS issued an IHA to HPMS to take marine mammals incidental to the Old Sitka Dock North Dolphins Expansion Project in Sitka, Alaska (85 FR 21399, April 17, 2020), effective from October 1, 2020 through February 28, 2021. On February 3, 2021, NMFS received

an application to complete the remaining work from the 2020 IHA. The application was deemed adequate and complete on February 21, 2021. As described in the application for the new IHA, the activities for which incidental take is requested were covered by the 2020 authorization but will not be completed prior to its expiration. HPMS requested the new IHA be effective from April 15, 2021 through April 14, 2022. We proposed to issue an IHA on March 18, 2021 (86 FR 14727).

Description of the Specified Activities and Anticipated Impacts

As described in the 2020 IHA, HPMS is adding two additional dolphin structures and strengthening two existing dolphin structures at their deep-water dock facility in Sitka Sound. Construction at the dock facility includes vibratory pile installation (and small impact if necessary) and vibratory removal of eight temporary, 30-inch template pile structures, vibratory and impact installation of 10 48-inch permanent piles comprising the dolphins, and down-the-hole drilling to install eight bedrock anchors for the permanent piles of the dolphins. The only remaining work for this IHA is constructing one new dolphin (*i.e.*, four 30-inch template piles and four 48-inch piles). The remaining work consists of 9 days of in-water work.

Vibratory pile removal and installation, impact pile installation, and drilling activity will introduce underwater sounds that may result in take, by Level A and Level B harassment, of seven species (Level A harassment is authorized for only two of the seven species) of marine mammals in Sitka Sound. As of February 21, 2021 the project has recorded small Level B harassment takes of three species. This IHA authorizes the remaining take associated with the work not completed under the 2020 IHA. A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (86 FR 14727; March 18, 2021). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here.

Please refer to that **Federal Register** notice and the original proposed and final IHA documents referenced therein for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to HPMS was published in the Federal Register on March 18, 2021 (86 FR 14727). That notice described, in detail, HPMS's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received no public comment.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the notices of the proposed and final IHAs for the 2020 authorization. NMFS has reviewed the monitoring data from the 2020 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the 2020 IHA.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the notices of the proposed and final IHAs for the 2020 authorization. NMFS has reviewed the monitoring data from the 2020 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that, besides the revised understanding of down-the-hole drilling source levels and Steller's sea lion occurrence mentioned above and analyzed below, neither this

nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notice of the final IHA for the 2020 IHA. Specifically, the source levels, and days of operation applicable to this authorization remain unchanged from the previously issued IHA, except for the change to the down-the-hole drilling source level and Level A harassment zones described below and in Table 1. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA. The only change to the marine mammal density/occurrence data is an increase in Steller's sea lions around the time of the herring run as discussed below. The only change to the number of takes, which are indicated below in Table 2, is to account for the increased occurrence of Steller's sea lions and the work remaining to be completed.

Because the Level B source levels and harassment zone sizes for down-the-hole drilling did not change from the 2020 IHA we do not change the overall or Level B harassment take from down-the-hole drilling. However, in the 2020 IHA we used a source level of 166.2 dB (RMS) (decibels root mean square) to calculate the Level A harassment isopleths for down-the-hole drilling. More recent hydroacoustic data and analysis from down-the-hole drilling projects has led us to recommend the use of a source level of 164 dB SELss (sound exposure level single strike) from Denes *et al.* (2019) for the impulsive component of this source relevant for Level A harassment isopleth calculation. Using this source level and the equivalent user spreadsheet inputs, the Level A harassment isopleths for the down-the-hole drilling increase from 10 to 336.5 m, depending on hearing group, in the 2020 IHA, to 26.1 to 873.7 m in this IHA (Table 1).

Table 1. Calculated Distances to Level A harassment Isopleths for Down-the-Hole Drilling from the 2020 IHA and this IHA

Activity	Level A harassment zone (m)				
	Low-Frequency Cetaceans	Mid-Frequency Cetaceans	High-Frequency Cetaceans	Phocid Pinnipeds	Otariid Pinnipeds
33-inch down-the-hole (2020 IHA)	282.5	10.0	336.5	151.2	11.0
33-inch down-the-hole (this IHA)	733.5	26.1	873.7	392.5	28.6

While the Level A harassment zones for down-the-hole drilling increase for this IHA as discussed above, we do not increase the Level A harassment takes for any species. HPMS is planning to implement activity-specific shutdown zones that are larger than in the 2020 IHA for down-the-hole drilling for all hearing groups except high-frequency cetaceans (Table 3). The revised down-the-hole drilling shutdown zones for low- and mid-frequency cetaceans and otariids are smaller than the largest Level A shutdown zones for those groups in the 2020 IHA, which did not necessitate any Level A takes in the 2020 IHA. Shutdown zones are expected to be successful in mitigating take for all of these species. Therefore, there is no need to revise or add Level A takes for any of these species in this IHA. The preliminary monitoring report shows no Level A or Level B harassment take of harbor porpoises through the completion of half of the project. Therefore, we believe that the previously authorized daily rate of Level A harassment takes is adequate to complete the project. The preliminary monitoring report shows 1 Level B harassment take and no Level A harassment takes of harbor seals (phocid) through the completion of half of the project. We have also proposed doubling the size of the shutdown zone for harbor seals. Therefore, we believe that the previously authorized daily rate of Level A harassment takes is adequate to complete the project.

As discussed above, the 2020 IHA was not effective during the spring/summer run of herring upon which Steller's sea lions are known to congregate near to feed on. To account for this potential for HPMS construction activity to affect more Steller sea lions

we are increasing the estimate that two groups of eight Steller sea lions may occur within the Level B harassment zone on each of the days of in-water construction used in the 2020 IHA to three groups of eight Steller sea lions may occur within the Level B harassment zone on each of the days of in-water construction for this IHA. Thus we estimate that 8 animals in a group \times 3 groups each day \times 9 days of in water work = 216 Level B harassment takes be authorized. As discussed in the 2020 IHA NMFS has determined that for management purposes the proportion of Western Distinct Population Segment (DPS) Steller sea lions in that area will be calculated based on Hastings *et al.* (2020). As such, NMFS expects that 2.2 percent of Steller sea lions in the project area will be from the Endangered Species Act (ESA)-listed Western DPS, with the remaining 97.8 percent expected to be from the Eastern DPS. Therefore, of the 216 Level B harassment takes requested, 5 takes are expected to be of Steller sea lions from the ESA-listed Western DPS (western stock) and 211 are expected to be of Steller sea lions from the Eastern DPS (eastern stock).

Based on the above discussion therefore, the only changes to the take for this IHA (Table 2) are to increase the daily rate of take by Level B harassment for increased occurrence of Steller's sea lions.

Table 2. Estimated Take by Level A and Level B Harassment, by Species and Stock

Common Name	Stock	Level A Harassment Take	Level B Harassment Take	Total Take
Gray Whale	Eastern North Pacific	0	3	3
Minke Whale	Alaska	0	2	2
Humpback Whale	Central North Pacific	0	72	72
Killer Whale	Eastern North Pacific Alaska Resident	0	16	16
	Gulf of Alaska, Aleutian Islands, Bering Sea Transient			

	Eastern North Pacific Northern Resident			
	West Coast Transient			
Harbor Porpoise	Southeast Alaska	4	45	49
Steller Sea Lion ^a	Eastern U.S.	0	211	211
	Western U.S.		5	5
Harbor Seal	Sitka/ Chatham Strait	4	252	256

^a Eastern U.S. and Western U.S. stocks correspond to the Eastern DPS and Western DPS, respectively.

Table 3. Shutdown Zones by Marine Mammal Hearing Group, Pile Size, and Method

Activity	Shutdown Zone (m)				
	LF Cetaceans	MF Cetaceans	HF Cetaceans	Phocids	Otariids
30-inch Vibratory Pile Driving/Removal	50	10	50	25	10
48-inch Vibratory Pile Driving	50	10	50	25	10
Down-the-hole Drilling (2020 IHA)	300	10	200	100	25
Down-the-hole Drilling (this IHA)	750	30	200	200	30
48-inch Impact Pile Driving (and 30-inch impact pile driving, as necessary)	825	50	100	100	50

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the 2020 IHA, except for the changes to the shutdown zones for down-the-hole drilling for low and mid-frequency cetaceans and pinnipeds discussed above. Because the estimated take, and total authorized take, has not increased, the discussion of the least practicable adverse impact included in in the **Federal Register** notice announcing the issuance of the 2020 IHA remains accurate. The following

measures are included in this authorization:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.*, standard barges, etc.), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location, or (2) positioning of the pile on the substrate via a crane (*i.e.*, stabbing the pile);
- Drive all piles with a vibratory hammer until achieving a desired depth or refusal prior to using an impact hammer;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or on a path towards the Level B harassment zone;
- If take reaches the authorized limit for an authorized species, pile installation will be shut down as these species approach the Level B harassment zone to avoid additional take;
- Implement all mitigation measures described in the biological opinion;
- Establish shutdown zones for all pile driving/removal and drilling activities. Shutdown zones will vary based on the activity type and marine mammal hearing group (see Table 3);
- Monitor the Level B harassment zones and Level A harassment zones;
- The placement of protected species observers (PSOs) during all pile driving and removal and drilling activities will ensure that the entire shutdown zone is

visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (*e.g.*, fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected. Due to the large Level B harassment zones (Table 3), PSOs will not be able to effectively observe the entire zone. Therefore, Level B harassment exposures will be recorded and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible;

- **Soft Start-** For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at 40 percent energy, followed by a 1 minute waiting period. This procedure will be conducted three times before impact pile driving begins. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer;
- **Pre-activity Monitoring-** Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal or drilling of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and no species for which take is not authorized are present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If

the entire Level B harassment zone is not visible at the start of construction, pile driving or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment zone and shutdown zones will commence;

- Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal and drilling activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed or anchor shafts being drilled. Pile driving and drilling activities include the time to install, remove, or drill inside a single pile or series of piles, as long as the time elapsed between uses of the pile driving or drilling equipment is no more than 30 minutes;

- A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities. If no comments are received from NMFS within 30 days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments; and

- In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (301-427-8401), NMFS and to Alaska Regional Stranding Coordinator (907-586-7209) as soon as feasible.

Determinations

The action in this IHA is identical to the action in the 2020 IHA except that work will now be allowed from April 15, 2021 through April 14, 2022, Steller's sea lion daily rate of take has increased, and the down-the-hole drilling Level A harassment source levels and zones have been updated to our current standards. As described in the notice of

issuance of the 2020 final IHA (85 FR 21399, April 17, 2020) we found that HPMS' construction activities would have a negligible impact and that the taking would be small relative to population size. For this analysis of the new IHA we found that marine mammal abundance was still estimated to be the same or larger than was known for the 2020 IHA and that any changes did not affect our analysis or findings. Other marine mammal information and the potential effects were identical to the 2020 IHA. The estimated take was calculated identically to the 2020 IHA, except for Steller's sea lions. For Steller's sea lions the total take that occurred during the 2020 IHA plus the take authorized here are less than the take authorized in the 2020 IHA. Mitigation and monitoring are identical to the 2020 IHA except for the increase in Level A harassment and shutdown zones for the down-the-hole drilling for four hearing groups. These new zones are smaller than the existing zones for impact driving of the 48-inch piles, meaning there is no change to the largest Level A harassment or shutdown zones for the project as a whole, just potentially the number of days where larger Level A harassment and shutdown zones would need to be implemented.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the 2020 IHA. This includes consideration of the estimated abundance of one stock of killer whales increasing slightly, the change in months of work and Steller's sea lion take per work day, and the updated consideration of down-the-hole drilling source levels and Level A harassment zones.

Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small

numbers of marine mammals relative to the affected stock abundances; (4) HPMS' activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and, (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Region, Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

Two marine mammal species, Mexico DPS humpback whales and Western DPS Steller sea lions, occur in the project area and are listed as threatened and endangered,

respectively, under the ESA. The NMFS Alaska Regional OPR Division issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to HPMS under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of either species, and is not likely to destroy or adversely modify western DPS Steller sea lion critical habitat. On February 23, 2021, the NMFS Alaska Regional Office Protected Resources Division notified us that they would issue a memo to the file, noting that the changes to allow work year round and to the down-the-hole drilling source levels do not alter the conclusions of the original Biological Opinion as long as the revised shutdown zones are implemented as additional mitigation and monitoring requirements, and no re-initiation of the consultation is necessary.

Authorization

NMFS has issued an IHA to HPMS for the potential harassment of small numbers of seven marine mammal species incidental to the Old Sitka Dock North Dolphins Expansion Project in Sitka, Alaska, provided the previously mentioned mitigation, monitoring and reporting requirements are followed.

Dated: April 22, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.